



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2014-0602; FRL-9932-39-Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Controlling Emissions During Episodes of High Air Pollution Potential

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Missouri and received by EPA on December 17, 2013, pertaining to Missouri's regulation "Controlling Emissions During Episodes of High Air Pollution Potential." This regulation specifies conditions that establish air pollution alerts and emergency alert levels, and associated procedures and emission reduction objectives statewide. This action revises the SIP by amending an existing table in the regulation, clarifying requirements of the regulation related to emission reduction plans and other provisions, and makes administrative and format changes, all consistent with Federal

regulations.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2014-0602. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7147, or by email at bhesania.amy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. EPA’s Response to Comments.
- IV. What Action is EPA Taking?

I. What is Being Addressed in this Document?

EPA is taking final action to approve a revision to the Missouri SIP received by EPA on December 17, 2013, pertaining to Missouri regulation 10 CSR 10-6.130, “Controlling Emissions During Episodes of High Air Pollution Potential.” This regulation specifies conditions that establish air pollution alerts and emergency alert levels, and associated procedures and emission reduction objectives statewide. This action revises the SIP by amending an existing table in the regulation, clarifying requirements of the regulation related to emission reduction plans and other provisions, and makes administrative and format changes all consistent with Federal regulations. EPA proposed approval of this rule on November 4, 2014 at 79 FR 65362.

Specifically, in subsection (1)(A), the regulation is being revised to clarify the applicability of the regulation to all sources and premises throughout the entire state with emissions of sulfur dioxide (SO₂), carbon monoxide (CO), ozone (O₃),

nitrogen dioxide (NO₂) or Particulate Matter - 10 Micron (PM₁₀) and 2.5 Micron (PM_{2.5}) that contribute to the air quality levels in the state. This clarification is consistent with federal regulations regarding prevention of air pollution emergency episodes found in 40 CFR part 51, subpart H.

In addition, specific terms in this regulation that were previously defined in section (2) have now been removed and placed in Missouri regulation 10 CSR 10-6.020, "Definitions and Common Reference Tables."

In section (3) of the regulation, table A is being amended to remove the specific breakpoint values for each relevant pollutant but retains the Air Quality Index (AQI) range values and categories for each pollutant. Because the AQI breakpoint values are updated each time a National Ambient Air Quality Standard (NAAQS) is revised, removing these values from the table eliminates unnecessary updates to this table. The AQI breakpoint values are established when EPA takes final action to revise a NAAQS. In subparagraph (3)(A)2., Missouri identifies that these breakpoint values are codified in 40 CFR part 58, appendix G and therefore applicable to this state regulation Missouri's SIP approved regulation 10 CSR 10-6.010, Ambient Air Quality Standards, adopts EPA's most recent air quality standards and thus associated AQI breakpoint values. Therefore there is no need for this regulation being amended as part of

today's action, to also contain these breakpoint values. This revision to the regulation does not alter any provisions or applicability of the regulation.

The conditions that are listed for alert level categories are being moved from a narrative outline format into a table format in subsection (3)(B), table B, to provide more clarity regarding the specific applicable conditions. The requirement for an air stagnation advisory to be in effect in order to trigger an alert has been removed from all alert level categories thus, the conditions that are required to establish an alert are more easily triggered.

The procedures established for addressing alert level conditions are being moved from a narrative outline into a table format in subsection (3)(C), table C, to provide clarity on applicable procedures. The alert level procedures associated with an orange alert which are currently listed in the regulation have been removed. These orange alert procedures were inadvertently retained when the state revised their regulation in 2002 to be consistent with revised Federal regulations by updating the formally called Pollution Standards Index (PSI) to the AQI standards and procedures as codified in 40 CFR part 58, appendix G. EPA took action to approve Missouri's SIP revision on March 18, 2003 (68 FR 12829). Establishing orange alert procedures are not a Federal requirement. Today's action amends

the SIP to correct this error. This action does not alter the stringency of the regulation.

Additional clarity is being added to section (4) of the regulation addressing reporting and recordkeeping requirements. The alert plan requirements that are outlined in section (3) of the regulation are being moved to a table format, tables D, E, and F. These tables retain the same objectives as previously contained in the regulation, only modified in format and moved to section (4) of the regulation with the exception of one red alert procedure. The red alert procedure which previously outlined provisions for the director to request all entertainment functions and facilities be closed has been removed from the regulation. This procedure is not a requirement of Federal regulations for red alert procedures, and therefore remains consistent with Federal requirements. This does not alter the stringency of the regulation. This procedure remains applicable for maroon level procedures.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations. These modifications will not adversely affect air quality and will not relax the SIP.

III. EPA's Response to Comments

The public comment period on EPA's proposed regulation opened November 4, 2014, the date of its publication in the **Federal Register**, and closed on December 4, 2014 (79 FR 65362). During this period, EPA received two comment letters. The first letter is in support of EPA's action and therefore no response to the comment is necessary. The comments included in the second letter are addressed below.

Comment 1: The commenter expressed overall agreement with EPA actions, however requests EPA to "clarify certain aspects of the emergency episode program as well as the Air Quality Index (AQI) values derived from the significant harm levels (SHLs) for the PM_{2.5} NAAQS."

Response 1: Because this comment is not directly related to EPA's proposed action on November 4, 2014, no changes will be made in response to this comment. In this action, EPA is evaluating specific revisions to the existing SIP in Missouri. EPA is not addressing other Federal regulations that govern issues such as the AQI or SHLs for PM_{2.5}. EPA provides the following background and references as guidance to address the commenter's request to clarify certain aspects of the emergency episode program.

EPA promulgated regulations for emergency episodes in 40 CFR part 51, subpart H (51.150 through 51.153). The regulations address the following:

- 51.150 - how regions are classified for sulfur oxides (SO_x), PM, carbon monoxide (CO), nitrogen dioxide (NO₂), and ozone;
- 51.151 - the requirement for a contingency plan for any region classified as Priority I to prevent air pollution levels from reaching the significant harm levels (SHLs) established therein;
- 51.152 - the specific content requirements for a contingency plan; a requirement that regions classified as Priority IA or II have a contingency plan that addresses a subset of those content requirements; a provision that

regions “classified Priority III do not need to develop episode plans;” and an exemption mechanism for the Administrator; and

- 51.153 - how states should review the classification of regions using the most recent three years of data; and a requirement to revise emergency episode plans if a higher classification is warranted by the recent air pollution levels.

EPA has issued several memoranda that provide guidance on emergency episode planning to meet the requirements of section 110(a)(2)(G), including the 2007 Infrastructure SIP Guidance for the 1997 ozone and 1997 fine particulate matter (PM_{2.5}) NAAQS¹, the 2009 Infrastructure SIP Guidance for the 2006 PM_{2.5} NAAQS², the 2011 Infrastructure SIP Guidance for the 2008 lead (Pb) NAAQS³, and the 2013 Infrastructure SIP Guidance for the 2008 ozone, 2010 NO₂, 2010 sulfur dioxide (SO₂), and all future NAAQS. The latter represents EPA’s most recent guidance.⁴

¹ “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” William T. Harnett, Director, EPA’s Air Quality Policy Division, October 2, 2007. http://www.epa.gov/ttn/oarpg/t1/memoranda/110a_sip_guid_fin100207.pdf.

² “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards,” William T. Harnett, Director, EPA’s Air Quality Policy Division, September 25, 2009. http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf

³ “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards,” Stephen D. Page, Director, EPA’s Office of Air Quality Planning and Standards, October 14, 2011. <http://www.epa.gov/air/lead/pdfs/20111014infrastructure.pdf>

⁴ “Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Stephen D. Page, Director, EPA’s Office of Air Quality Planning and Standards, September 13, 2013. http://www.epa.gov/oar/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf

Comment 2: The commenter also stated that EPA incorrectly stated in its November 4, 2014, proposed action that Missouri's regulations are "consistent" with Federal regulations that meet the breakpoint values in subpart H.

Response 2: When stating the state's action was 'consistent' with federal regulations, EPA was specifically referring to the Missouri revision in subsection (1)(A) of the regulation which was revised to clarify the applicability of the regulation to all sources and premises through the entire state. EPA believes that this specific revision to subsection (1)(A) of the regulation is in fact consistent with subpart H of 40 CFR part 51. This subsection of Missouri's regulation does not relate to the AQI table as the commenter suggests.

Comment 3: The commenter implied that Missouri was removing SHLs from their regulation and was instead relying on AQI breakpoint values to determine the levels at which emergency episodes occur.

Response 3: Missouri's regulations do not specifically include SHL values, and therefore EPA is not taking action to remove SHLs. In addition, for identified priority areas in Missouri, the state is not changing these classifications or supplanting these priority levels with the AQI.

Comment 4: The commenter stated that AQI breakpoint values are not updated each time the National Ambient Air Quality Standards (NAAQS) are revised.

Response 4: The January 15, 2013, final rule for the PM_{2.5} standards updated the AQI breakpoint values for PM_{2.5}. See 78 FR 3086. This is consistent with past EPA actions.

Comment 5: The fifth and sixth paragraphs of the commenter's letter expresses concern about EPA's historical actions related to the emergency episode program and that EPA has not determined a SHL (and thus AQI breakpoint values) specifically for PM_{2.5}.

Response 5: Because this comment is not related to EPA's proposed action on November 4, 2014, no changes will be made to EPA's action in response to this comment. Further, because EPA is not taking action to address or revise any SHL in Missouri's regulation, no changes will be made to EPA's action in response to this aspect of the comment. See response to comment 1 above for further information on EPA's historical actions related to the emergency episode program. In addition, while the regulations in 40 CFR part 51, subpart H do not address PM_{2.5} specifically and do not identify a significant harm level or priority classification levels for PM_{2.5}, the EPA has recommended to states, through the September 25, 2009 guidance, which remains in effect, that states only need to develop contingency plans for any area that has a monitored and recorded 24-hour

PM_{2.5} levels greater than 140.4 ug/m³ since 2006. The EPA has evaluated PM_{2.5} regulatory monitoring data in Missouri since 2006 and have confirmed that no values greater than 140.4 ug/m³ have been recorded. Accordingly, EPA believes that there are no areas in Missouri for which a contingency plan is required at this time. If there were an area for which such a contingency plan were necessary, however, EPA's 2013 infrastructure SIP guidance states, "the EPA believes that the central components of a contingency plan would be to reduce emissions from the source(s) at issue (if necessary by curtailing operations of...PM_{2.5} sources) and public communication as needed." Thus, the absence of a significant harm level and classification levels for PM_{2.5} are not relevant, if Missouri were required to develop a contingency plan for purposes of PM_{2.5}, which it is not at this time.

However, EPA notes that the state regulation is applicable to "all emissions" including PM_{2.5} and therefore the provisions of the state regulation apply to PM_{2.5} as well.

Comment 6: The commenter requests clarification regarding the "placeholder" AQI levels and SHLs for PM_{2.5} remain appropriate for the nation and for Missouri.

Response 6: EPA has previously approved Missouri's emergency episode plan as meeting the requirements of CAA section 110(a)(2)(G), See 78 FR 37457. For a detailed rationale on EPA's analysis of how Missouri meets these requirements, see EPA's proposed action on April 10, 2013 (78 FR 21281).

In response to the commenter's broader concern of the appropriateness of the AQI levels in relation to SHLs for PM_{2.5}, EPA directs the commenter to EPA's February 2007 issue paper on revising the AQI and setting a SHLs for PM_{2.5} as previously referenced in comment 1.

Comment 7: The commenter stated that, "EPA should not approve state regulations that are merely 'consistent with' federal regulations when EPA clearly set out 'placeholder' values and not real values that would protect the public health and welfare."

Response 7: Because this comment is not related to EPA's action on November 4, 2014, no changes will be made in response to this comment. EPA directs the commenter to EPA's February 2007 issue paper on revising the AQI and setting a SHL for PM_{2.5} as previously referenced in comment 1.

Comment 8: The commenter requested that EPA should explain why it has not revised the SHLs for PM_{2.5} in 15 years.

Response 8: Because this comment is not related to EPA's action on November 4, 2014, no changes will be made in response to this

comment. EPA directs the commenter to response number 1 and 5 above for further explanation of historical actions on EPA's emergency episode planning requirements and guidance.

IV. What Action is EPA Taking?

Upon review and consideration of comments received, EPA is taking final action to revise the Missouri SIP pertaining to Missouri regulation 10 CSR 10-6.130, "Controlling Emissions During Episodes of High Air Pollution Potential." Based upon review of the state's SIP revision and relevant requirements of the CAA, EPA believes that this revision meets applicable requirements and does not adversely impact air quality in Missouri.

Statutory and Executive Order Reviews

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri Code of State Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness

Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon

monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 4, 2015.

Mark Hague,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart AA - Missouri

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10-6.130 as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.130	Controlling Emissions During Episodes of High Air Pollution Potential	12/30/13	[Insert Federal Register date of publication date], [Insert Federal Register citation]	
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[FR Doc. 2015-20249 Filed: 8/17/2015 08:45 am; Publication Date: 8/18/2015]